[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J., POYSER, C.J. (F.M.S.) & GORDON-SMITH, Ag. J.A.

December 14, 1940

IN RE MOHAMED SALLEH EUSOOF ANGULLIA DECEASED AND IN RE AN INDENTURE DATED THE 17th MAY, 1915, ETC.

RAHIMABOO BINTE MOHAMED SALLEH ANGULLIA (f) (Respondent)

v.

MOHAMED AHMAD ANGULLIA AND KASSIM AHMAD ANGULLIA (Appellants).

[SINGAPORE CIVIL APPEAL No. 13 of 1940]

Will—Mortgage of "all the share and interest" of a beneficiary—Construction—Beneficiary subsequently becoming entitled to a further share under a limitation to another's "heirs according to Mohammedan law"—Spes successionis—Whether such interest passed under the mortgage—Mortgage executed by attorney—Construction of mortgage by reference to power of attorney—Effect of new referential document.

The testator M.S.E. Angullia died on the 21st September 1904 leaving a will and two codicils under which his two sons A. and E. and his daughter the plaintiff received certain shares. E's share was settled on certain trusts, the ultimate limitation, on failure of issue at E's death, being to "his heirs according to Mohammedan law". On the 31st January 1907, the plaintiff mortgaged to one Komarappa Chitty all her "share and interest in the estate and effects" of the testator, "and all other if any" her share and interest in the estates and effects of the testator "whether arising under the terms of his will or otherwise". The mortgage was executed by an attorney of the plaintiff.

At the date of the mortgage the plaintiff had her own share in the testator's estate and it was not disputed that this passed under the mortgage. E. died on the 7th June 1938 without issue, and thereupon his share in the testator's estate devolved upon his brother A. and his sister the plaintiff as his heirs according to Mohammedan law, in the proportion of 2 shares to 1 respectively. The plaintiff's mortgage in the meantime had been foreclosed, and A. had taken a transfer of the mortgagee's rights and interest. A. died on the 25th August 1939 leaving the 1st and 2nd defendants as his executors. The 1st and 2nd defendants claimed that A. as successor in title of Komarappa Chitty was entitled under the mortgage to the 1/3rd share of E's share in the testator's estate which devolved under the will to the plaintiff on E's death.

Held, by the Court of Appeal that even if the interest of the plaintiff in Eusoof's share under the will was at the date of the mortgage a mere **spes successionis** and not an actual interest in property nevertheless the language of the mortgage and of the assignment therein contained was sufficiently wide to cover the interest which on the death of Eusoof vested in possession. It was sufficient if it could be shown that the interest was assignable in equity, that the intention to assign was fully established, and that the assignment was for valuable consideration. In this case all the necessary conditions had been complied with and as soon as the plaintiff's interest vested in possession on the death of Eusoof the assignment operated as a contract binding on the conscience of the assignor.

Cases referred to:—

(1) *Parsons, In re; Stockley v. Parson,* 45 Ch. D. 51.

(2) *Tailby v. The Official Receiver,* 13 A.C. 523.

(3) *Williams' Settlement, In re; Williams v. Williams,* (1911) 1 Ch. 441.

APPEAL by the 1st and 2nd defendants, the executors of Ahmad Mohamed Salleh Angullia deceased, from the judgment of Pedlow, J., delivered on the 29th August 1940 in Originating Summons No. 5 of 1940 reported in 9 M.L.J. 265.

E. R. Koek for appellants (1st and 2nd defendants).

John Laycock for respondent (plaintiff).

The Court of Appeal consisting of **Terrell, Ag. C.J. (S.S.), Poyser, C.J. (F.M.S.) and Gordon-Smith, J.A.** allowed the appeal.

The following written judgment was subsequently delivered by the President of Court.

Terrell, Ag. C.J.—It appears to me that, in the words of Lord Macnaghton in *Tailby v. The Official Receiver*(2) "this case is free from difficulty when the facts are understood".

The plaintiff was entitled to certain interests and benefits under the will of Mohamed Salleh Eusoof Angullia deceased (hereinafter called "the testator") who died on the 21st September, 1904. By the terms of the testator's will his sons Ahmad Mohamed Salleh Angullia and Eusoof Mohamed Salleh Angullia and his daughter the plaintiff, respondent on this appeal, were, with others, entitled to share in the residue, and by a second codicil to his will the testator settled Eusoof's share on certain protective trusts as to the income during his life, and after his death the capital of the share was to be held upon the following trusts:—

> "In Trust for all his (Eusoof's) children who being sons shall attain the age of twenty-one years or being daughters shall attain that age or marry in equal shares except that the shares of sons shall be twice as much as the share of daughters and if there shall be one such child the whole to be in trust for that one child and if there shall be no child of the said Eusoof Mohamed Salleh Angullia who being a son shall attain the age of twenty-one years or being a daughter shall attain that age or marry then in trust for his heirs according to Mohammedan law

but so that the share of males shall be twice as much the share of females Provided always that the said Eusoof Mohamed Salleh Angullia may by deed or will appoint that the whole or any part of the income of the said share shall after his death be paid to his widow or widows (if any) during life or for any less period Provided also that notwithstanding the foregoing trusts the trustees of the said share at any time or times if they shall in their uncontrolled discretion think fit so to do transfer or pay the whole or any part of the capital of the share of the said Eusoof Mohamed Salleh Angullia or the trust funds representing the same unto the said Eusoof Mohamed Salleh Angullia for his absolute use or otherwise apply the same for his benefit or they may with the consent of the said Eusoof Mohamed Salleh Angullia revoke by deed all or any of the trusts hereinbefore declared and declare any new or other trusts of or concerning the said share or any part thereof...."

On the 21st November, 1906, the plaintiff gave a power of attorney to her husband authorising him to borrow money on the security of her interests whether vested or contingent, in possession or expectancy, in the estate of the testator, and on the 31st January, 1907, the plaintiff, by her attorney, executed a mortgage (hereinafter called the mortgage deed) in favour of one R.M.S.M. Komarappa Chetty to secure present and future advances, which, according to the plaintiff's affidavit filed in support of the summons, amounted to $11,000.00. Paragraph 2 of the mortgage deed read as follows:—

"The Mortgagor hereby assigns and the surety hereby confirms unto the Mortgagee (1) All the share and interest of the Mortgagor in the estate and effects of the said Mohamed Salleh Eusoof Angullia and in the movable and immovable property subject to the terms of his Will and in the rents, profits and income thereof and in the proceeds of sale thereof, (2) And all other if any the share and interest of the Mortgagor in the estates and effects of the said deceased and that whether arising under the terms of his Will or otherwise. To hold...."

The benefit of the mortgage deed subsequently became vested in one Cassim Ajam Piperdy who commenced foreclosure proceedings in Singapore Suit No. 78 of 1909, and on the 31st January, 1910, the Court made a foreclosure order absolute, as a result of which all the share and interest of the plaintiff in the estate of the testator which had been assigned by the mortgage deed became vested absolutely in Cassim Ajam Piperdy.

Subsequently the testator's son Ahmad purchased such interest, and at the time of his death on the 25th August, 1939, was absolutely entitled thereto.

In the meantime, on the 7th June 1938 the testator's son Eusoof died without leaving a widow or children, and without either Eusoof or the trustees having exercised any of the powers reserved to them by the provisions of the second codicil referred to above. In consequence thereof the plaintiff became entitled, as one of the next of kin of Eusoof, to a one-third share in the properties settled on Eusoof. The third and fourth defendants, who were not represented on the appeal, are the trustees of Eusoof's settled share and the first and second defendants, the appellants, are the legal personal representatives of Ahmad. This Originating Summons was issued on the 10th January, 1940, and prayed the Court for the determination of the following questions—

"Is the plaintiff as a sister and therefore one of the next of kin of Eusoof Mohamed Salleh Angullia deceased according to Mohammedan Law now entitled to one third share in the leasehold land and premises situate and known as Nos. 134 to 137 Queen Street, Nos. 25 to 31 Angullia Road and Nos. 10, 12, 14 and 16 Muar Road, Singapore?"

The properties referred to are the specific properties which were allocated to the share of Eusoof, and are the properties subject to the trusts declared by the second codicil. The only question, therefore for the decision of the Court is the construction of the assignment contained in the mortgage deed.

Considerable argument was addressed to this Court, and to the Court below, on the question whether the plaintiff's interest in Eusoof's settled estate as one of his next of kin was a contingent interest or a mere *spes successionis*. The exact meaning of "contingent" has never been very clearly defined. On the one hand it may be said that anything is contingent when it is liable to failure on the happening or non-happening of an event, condition or state of things (*Stroud's* Judicial Dictionary). In this wide sense the plaintiff's interest was undoutedly contingent. There is, however, ample authority for Mr. Laycock's proposition that the plaintiff's interest was a mere expectancy, or *spes successionis* as distinct from a contingent interest (see *In re Parsons Stockley v. Parsons*[1]) and "possibilities" coupled with an interest have been contrasted with "bare possibilities". It is said that a possibility coupled with an interest may be devised and is assignable at law (see *In re Parsons*). These considerations have no possible relevance to the case before the Court. It was quite unnecessary for the appellants to establish that the plaintiff's interest was an interest which was assignable as a legal chose in action under s. 4 (subs. 6) of the Civil Law Ordinance. It was sufficient if it could be shown that the interest was assignable in equity, that the intention to assign was fully established, and that the assignment was for valuable consideration. The law on the subject is very clearly stated by Lord Macnaghton in *Tailby v. The Official Receiver*[2] in the following terms:—

"It has long been settled that future property, possibilities and expectancies are assignable in

equity for value. The mode or form of assignment is absolutely immaterial provided the intention of the parties is clear. To effectuate the intention an assignment for value, in terms present and immediate, has always been regarded in equity as a contract binding the subject matter of the contract when it comes into existence, if it is of such a nature and so described as to be capable of being ascertained and identified".

There can be no question that the assignment in the mortgage deed of "all other if any the share and interest of the mortgage in the estate and effects of the said deceased and that whether arising under the terms of his Will or otherwise" is sufficient to cover the interest which on the death of Eusoof vested in possession. The assignment is in very similar terms to the assignment in *In re Williams' Settlement, Williams v. Williams*[3] which was there held sufficient to pass an interest which only arose in the event of the settlor's brother not living to attain the age of 21 years.

As soon as the plaintiff's interest vested in possession on the death of Eusoof, the assignment operated as a contract binding on the conscience of the assignor. The subject matter of such contract could be clearly ascertained and identified, and the contract was made for valuable consideration. All the necessary conditions, therefore were complied with, and the question raised by the Originating Summons should have been answered in the negative.

The appeal, therefore was allowed. The order of the 29th August 1940 is set aside. The plaintiff was ordered to pay the costs of appellants as between party and party both here and in the Court below. The appellants will be entitled to have their solicitor and client costs taxed and paid out of the settled estate of Eusoof so far as they are not recovered from the plaintiff. The costs of the third and fourth defendants will be taxed as between solicitor and client and paid out of the settled estate. The deposit will be repaid to the appellants or their solicitors.

Appeal allowed.

Solicitors for appellants (defendants)—*Chan & Eber.*

Solicitors for respondent (plaintiff)—*Braddell Brothers.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.